

STATE OF MICHIGAN  
COURT OF APPEALS

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CHRISTOPHER ANDRE MONTGOMERY,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY and DAPHNE  
WAKEFIELD,

Defendants,

and

FORD MOTOR COMPANY,

Defendant-Appellant.

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UNPUBLISHED

May 22, 2007

No. 272862

Wayne Circuit Court

LC No. 05-532593-NF

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

This appeal involves plaintiff's claim for damages in tort stemming from an automobile accident. Ford Motor Company appeals by leave granted from a circuit court order denying its motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a circuit court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). When reviewing a motion made pursuant to MCR 2.116(C)(10), which tests the factual support for a plaintiff's claim, "this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Id.*

[A] master is responsible for the wrongful acts of his servant committed while performing some duty within the scope of his employment. An employer is not vicariously liable for acts committed by its employees *outside the scope of employment*, because the employee is not acting for the employer or under the employee's control. *For example, it is well established that an employee's*

*negligence committed while on frolic or detour, or after hours, is not imputed to the employer. In addition, even where an employee is working, vicarious liability is not without its limits. . . . [Rogers v J B Hunt Transport, Inc, 466 Mich 645, 651; 649 NW2d 23 (2002) (internal quotation and citations omitted, emphasis added).]*

“The test of the liability of the master for his servant’s acts is whether the latter was at the time acting within the scope of his employment. *The phrase ‘in the course of his employment or authority,’ when used relative to the acts of a servant, means while engaged in the service of his master, or while about his master’s business.*” [*Nevins v Roach*, 249 Mich 311, 313-314; 228 NW 709 (1930) (emphasis added), quoting *Riley v Roach*, 168 Mich 294, 307; 134 NW 14 (1912).]

“While the issue of whether the employee was acting within the scope of his employment is generally for the trier of fact, the issue may be decided as a matter of law where it is clear that the employee was acting to accomplish some purpose of his own.” *Bryant v Brannen*, 180 Mich App 87, 98; 446 NW2d 847 (1989).

With respect to the commuting situation involved in this case, Michigan courts long have adhered to the general rule that negligence committed by an employee who is operating a vehicle in transit to or from the workplace does not constitute an act committed within the scope of his employment, which could subject his employer to vicarious liability for an accident. See *Vitaioli v Berklund*, 296 Mich 56, 61; 295 NW 557 (1941); see also *Bajdek v Toren*, 382 Mich 151, 153-154; 169 NW2d 306 (1969). Exceptions to this general rule of employer nonliability exist; for example, “an employer is liable for the torts of his servant committed while going to or coming from work, *if the employee’s trip involved a service of benefit to the employer.*” *Kester v Mattis, Inc*, 44 Mich App 22, 24; 204 NW2d 741 (1972) (emphasis added).

The undisputed evidence in this case establishes that at the time of the December 3, 2004, accident, Daphne Wakefield, a systems analyst for Ford for 15 years, was driving to her workplace. Plaintiff maintains, and the circuit court found, that the agreement pursuant to which Wakefield leased her Explorer Sport Trac from Ford tends to prove that her operation of the vehicle at the time of the accident conferred a benefit on Ford, such that it should be held vicariously liable for her alleged negligence. The “Product Testing and Evaluation Lease Vehicle Agreement,” which Wakefield signed on January 17, 2003, provides, in relevant part, as follows:

2. This lease will terminate automatically upon the Lessee’s accepting a similar lease from the Company for a different vehicle, or *upon termination of employment if the Lessee is an employee*, or upon death or moving to a foreign country if the Lessee is a retiree, or upon any breach of paragraph 9, 10, or 14 hereof. *At the company’s option and in its sole discretion, should it be determined that participation in the Lease Plan by any employee or retired employee would be inappropriate as not serving the Company’s interests, participation in the Plan may not be permitted. The Company may terminate this lease upon 3 business days’ notice in writing to the Lessee in the event the Lessee*

*fails to submit the mandatory testing and evaluation reports on a timely basis, fails to take reasonable care of the Vehicle, fails to make timely payment of any lease charge, fails to perform or observe any other provision of this lease, or in the event the Lessee's participation in the Plan has been determined by the Company to be inappropriate. The Lessee may terminate this lease at any time upon 3 business days' notice in writing to the Company.*

\* \* \*

6. *Lessee primarily will use the car for product testing and evaluation purposes and specifically shall not use the Vehicle, nor permit its use, to carry persons or property for a fee nor shall the Lessee use the Vehicle or permit its use for any Non-Ford or commercial purpose. . . .*

\* \* \*

9. *It is mandatory that the Lessee furnish to the Company such written Testing and Evaluation Reports on the quality and performance of the Vehicle as the Company may require from the Lessee from time to time. Completion of these mandatory reports for each Vehicle is a condition precedent to ordering a replacement vehicle and failure to submit such reports on a timely basis shall constitute a default under this lease.*

10. *To further the Company's interests by promoting its products, lessees are encouraged to permit others to drive the Vehicle for demonstration purposes. However, regular continuous use of the Vehicle during the term of the lease is restricted to the Lessee and members of the Lessee's immediate household. . . . [Emphasis added.]*

Wakefield confirmed in her deposition testimony that every few months or so, she completed online vehicle evaluation questionnaires and submitted them to Ford. To the best of Wakefield's recollection, the online evaluations documented vehicle mileage and addressed to some extent vehicle functionality and quality matters. Wakefield responded affirmatively to the inquiry whether she was always evaluating the vehicle while driving it.

We agree with the circuit court's conclusion that Wakefield's evaluation-related activity under the lease, or the promotional value arising from Wakefield's commute to work in the Explorer Sport Trac, benefited Ford to the extent that it may be vicariously liable for Wakefield's negligence. While plaintiff was not required to lease the vehicle as a condition of her employment, and while if she failed to comply with the evaluation requirements under the lease she was not subject to termination but only default under the lease, the fact remained that plaintiff chose to lease the vehicle, the ability to lease the vehicle under the terms provided arose solely because of her employment with Ford, and Ford received benefits when plaintiff exercised her leasing opportunity, i.e., vehicle feedback and promotion to assist Ford's business. Indeed, the lease agreement directed that plaintiff must "primarily . . . use the car for product testing and evaluation purposes," and this would encompass time driving to and from work. Although the operation of the vehicle was unrelated to plaintiff's work as a systems analyst, the operation was

nevertheless related to her employment with Ford, and she was engaged in the service of the master (Ford) by driving and evaluating the vehicle. We find no error with the trial court's analysis.

Affirmed.

/s/ Jessica R. Cooper  
/s/ William B. Murphy  
/s/ Janet T. Neff